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Attorneys for USACM Liquidating Trust

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA**

In re:

USA COMMERCIAL MORTGAGE
COMPANY,

USA CAPITAL REALTY ADVISORS,
LLC,¹

USA CAPITAL DIVERSIFIED TRUST
DEED FUND, LLC,

USA CAPITAL FIRST TRUST DEED
FUND, LLC,²

USA SECURITIES, LLC,³

Debtors.

Case No. BK-S-06-10725-LBR
Case No. BK-S-06-10726-LBR¹
Case No. BK-S-06-10727-LBR
Case No. BK-S-06-10728-LBR²
Case No. BK-S-06-10729-LBR³

CHAPTER 11

Jointly Administered Under Case No.
BK-S-06-10725 LBR

**Notice of Revision to Settlement
Agreement With Debt Acquisition
Company Of America V, LLC**

Date: No hearing requested
Time:
Place:

Affects:

- ☐ All Debtors
☒ USA Commercial Mortgage Company
☐ USA Capital Realty Advisors, LLC
☐ USA Capital Diversified Trust Deed Fund, LLC
☐ USA Capital First Trust Deed Fund, LLC
☐ USA Securities, LLC

Geoffrey L. Berman as Trustee of the USACM Liquidating Trust (the "Trust")
gives the Court and interested parties notice that the Asset Purchase Agreement between
the Trust and Debt Acquisition Company of America V, LLC ("DACA"), approved by

¹ This bankruptcy case was closed on September 23, 2008.

² This bankruptcy case was closed on October 12, 2007.

³ This bankruptcy case was closed on December 21, 2007.

1 this Court's March 4, 2009 Order [DE 6893], has been amended due to a mutual mistake,
2 as follows.

3 The Trust indicated to the Court, and negotiated with DACA for purchase of
4 Prepaid Interest due to the Trust, based upon an understanding that the uncollected balance
5 of Prepaid Interest was \$7,218,409.26, including \$2,051,179.26 on the Hotel Marquis
6 loan. Follow up with one of the claims buyers has demonstrated a mistake, in fact all of
7 the Prepaid Interest owed by Lenders in the Hotel Marquis loan was paid when the loan
8 was paid in full (including accrued interest). Accordingly, the Trust's uncollected Prepaid
9 Interest balance is only \$5,174,487.91.

10 Based upon a \$2 million price reduction, DACA could have asserted a right to
11 cancel the purchase under theories such as mutual mistake.⁴ The Trust had arguments
12 against such relief, and instead of potentially litigating their dispute, DACA and the Trust
13 agreed on a price adjustment. DACA has agreed to pay \$1,000,000 to buy \$5,174,487.91
14 in uncollected Prepaid Interest claims (19.3%) instead of DACA paying \$1,200,000 to buy
15 \$7,218,409.26 in uncollected Prepaid Interest claims (16.6% of face). A copy of the
16 parties' Amendment to Asset Purchase Agreement is attached and incorporated as Exhibit
17 2.

18 DACA wired the balance of the purchase price on Thursday, March 12, 2009 and
19 the Purchase Agreement, as amended, has been consummated, subject to dismissal of
20 DACA's appeal in the Ninth Circuit.

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23
24
25 ⁴ See *Tarrant v. Monson*, 96 Nev. 844, 845, 619 P.2d 1210, 1211 (1980) ("A mutual
26 mistake is a basis for an equitable rescission of a contract."); *Gramanz v. Gramanz*, 113
Nev. 1, 930 P.2d 753 (1997).



1 Dated: March 13, 2009

2 **LEWIS AND ROCA LLP**

3
4 By: /s/ RC (#6593)

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6 Rob Charles, NV 6593

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Counsel for USACM Liquidating Trust

10 Copy of the foregoing served on March 13, 2009, via e-
11 mail to all parties with e-mail addresses on the Post
12 Effective Date Official Service List on file with this
13 Court.

13 /s/ Carrie Lawrence

14 Carrie Lawrence

15 Lewis and Roca LLP